

HAROLD M. SOMER, ESQ.
HAROLD M. SOMER, PC
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Hearing Date: February 25, 2015 at 2:00 pm

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

D.A.B. Group LLC

Debtors

Chapter 11
Case No. 14-12057-scc

LIMITED OBJECTION TO AMENDED DISCLOSURE STATEMENT

HAROLD M. SOMER, an attorney duly licensed to practice law in the State of New York and admitted in the Southern District of New York, affirms the following to be true under penalty of perjury except as to those matters alleged to be upon information and belief which matters are believed to be true:

1. I am a member of the firm of Harold M. Somer, PC attorney for Flintlock Construction Services, LLC (“Flintlock”), a secured creditor.
2. The disclosure statement should provide more precise information as to the litigation pending with Orchard Hotel LLC and Orchard Construction LLC, and the relationship with the mechanics lienors to enable creditors to make a more informed decision in deciding whether to approve the proposed plan of reorganization.
3. Orchard Construction was formed for the purpose of taking by assignment the mechanics lien filed by Cava Construction and Development, Inc.

4. Both the Proof of Claim of and Objection to the proposed Amended Disclosure Statement filed by Orchard Construction are based upon the mechanics lien which Orchard claims take priority over other mechanics lienors by reason of a state court decision and judgment. What Orchard Construction has failed to disclose is that there is currently an appeal pending and thus there is no final adjudication of the priority issue.

5. Under New York State law, all mechanics liens are equal for purposes of payment and are to be paid pro rata from available funds if they are not to receive payment in full.

6. As Orchard Construction's claim is based upon the Cava mechanics lien, by its own admissions in its claim and objection, Orchard Construction has no priority over all of the other mechanics lien creditors who filed timely proofs of claim.

7. The disclosure statement also does not adequately reflect the treatment of the Class 3 Mechanics Lien Claims as to payment through the plan. Despite the treatment described in the disclosure statement and plan, payment to this Class is dependent upon the final non-appealable determination as to the amount due in connection with the pending state court mortgage foreclosure action between Orchard Hotel and the Debtor. Such litigation could take years before brought to its conclusion.

8. Orchard Hotel's pre-petition secured claim is in the sum of \$28,754,952.00. Upon information and belief, based upon the sale approved by this court, Orchard Hotel is over-secured and may be entitled to post-petition interest pursuant to 11 U.S.C. §506(b). At 7.75% (pre-default note rate) on the principal balance of \$16,686,394, the yearly interest is slightly in excess of \$1,290,000. The end result may be that there will be no funds available for Class 3 creditors especially in the event a confirmation order is not entered by April 15, 2015 which would result in the transfer of title to the real property being subject to a transfer tax.

9. The one simple fact is that this plan may only benefit Orchard Hotel and the Debtor's principal who personally guarantied the obligation.

Dated: Westbury, New York
February 23, 2015

HAROLD M. SOMER, PC
Attorney for Flintlock Construction
Services, LLC

/S/ Harold M. Somer

By: _____
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